

(2020) 02 PAT CK 0074

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2180 Of 2020

Joydeep Banerjee

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 19-02-2020

Acts Referred:

Hindu Succession Act, 1956 — Section 29

Bihar Board's Miscellaneous Rules, 1958 — Rule 356, 358

Citation : (2020) 02 PAT CK 0074

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Shashi Nath Jha, Majid Mahboob Khan

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner and learned AC to AAG 12 for the State.

2. The petitioner has moved the Court for the following reliefs:

â??(i) Quashing/Settling aside the order dt. 24.10.19 (Annx-9) passed by respondent no.-5 in Jamabandi cancellation appeal case

no.225/2013 (Yogananda Kumar Jogesh & Others Vs Umesh Prasad Yadav & Others) whereby whereunder the father of the petitioner-

Samir Kumar Banerjee has been directed to produce succession certificate on or before 17.12.2019.

(ii) Directing the respondents authorities to release total lands of the father of the petitioner namely Samir Kumar Banerjee & Late

Amarendra Kumar Banerjee from the â??escheatâ?? which have been taken from them vide Annx-2 to 4 hereto.

(iii) Holding & Declaring that collector of a district has no authority to usurp the

jurisdiction of a civil court, it is only civil court who can declare a property to be an "escheat" property.

(iv) Holding and declaring that the Learned authorities below have no jurisdiction to ask for succession certificate from the father of the

petitioner- Samir Kumar Banerjee, though the Jamabandi relating to the parts of the lands in question has already been running in the

name of Samir Kumar Banerjee and also in the name of his elder brother Late Amarendra Kumar Banerjee.

(v) Granting any other relief/reliefs for which the petitioner may be found entitled to in the facts and circumstances of the case."

3. The petitioner claims to be the son of Samir Kumar Banerjee, who in turn, claims to be the heir of Amarendra Kumar Banerjee with regard to a

piece of land recorded in his name in the revenue records and the authorities calling upon Amarendra Kumar Banerjee and Samir Kumar Banerjee to

submit succession certificate with regard to their claim.

4. Learned counsel for the petitioner submitted that the revenue authorities under Rule 358 of the Bihar Board's Miscellaneous Rules, 1958

(hereinafter referred to as the "Rules") cannot recommend for the property in question to be treated as "escheat" property on the ground

of there being no custodian of the recorded tenant. Learned counsel submitted that it is solely in the domain of the Civil Court to decide such issue and

if the State authorities dispute the same they have to move before the Civil Court in the matter. For such proposition, he relied upon a decision of the

Court in Alakh Narayan Darad v. State of Bihar reported as 1995 (2) PLJR 375. It was further submitted that the father of the petitioner being the

brother of Amarendra Kumar Banerjee, he is class-II heir and nobody has disputed this. Learned counsel submitted that the father of the petitioner

has also filed a representation before the Collector, Supaul in the matter which is still pending.

5. Learned counsel for the State submitted that by a detailed order of the Collector, Supaul dated 23.08.2014 in Jamabandi Cancellation Appeal Case

No. 225 of 2013 (Yogananda Kumar Yogesh & Others Vs Umesh Prasad Yadav & Others), details have been given with regard to the land in

question having an area of 31 bighas being unclaimed for years and with regard to which one Rajendra Yadav is said to have created various records

fraudulently in his favour including a Power of Attorney and had settled the land with his daughter-in-law and other relatives. It was submitted that in

such background, the Additional Collector, Supaul by order dated 24.04.2013 in Jamabandi Cancellation Case No. 01/2011 of 2009-10/2012-13 had

held that there was no custodian of previous Jamabandi No. 46/6116, and, thus, the entire land was placed under the custody of Circle Officer,

Triveniganj till the time the rightful raiyat appeared in person before the authority. It was submitted that thereafter, on the claim of the father of the

petitioner, a fresh notice was issued on 24.10.2019 which was received by the petitioner on 25.10.2019 on behalf of his father in which authority had

asked both Amarendra Kumar Banerjee and father of the petitioner to produce succession certificate. Learned counsel submitted that the father of

the petitioner had only produced his own affidavit and had filed a representation before the authorities, which is not sufficient for the reason that in the

order of the Collector, Supaul dated 23.08.2014, it has clearly been established that fraud was committed by various persons with regard to the lands in

question recorded in favour of Amarendra Kumar Banerjee. It was submitted that in such background, and also taking into account the fact that the

said Rajendra Yadav had fraudulently got the Power of Attorney from Amarendra Kumar Banerjee and the father of the petitioner just to cover up

his misdeeds, by which he had taken over the land and also created forged and fabricated documents, the authorities were perfectly justified in asking

the father of the petitioner to produce succession certificate.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in

the present application. The point raised by learned counsel for the petitioner that before moving to declare the property as "escheat" property

under Rule 358 of the Rules, it is for the authority to go for a suit before the Civil Court in case there is dispute but once there is claimant they cannot

direct the claimant to go for the civil suit, the Court does not find the situation to be so simple. In the present case, in the background what has been

recorded, the property though recorded in the name of Amarendra Kumar Banerjee was never dealt with by him for many years and one Rajendra

Yadav had taken over the property using forged and fabricated documents including Power of Attorney from the father of the petitioner and

Amarendra Kumar Banerjee. Thus, the authority was rightly not convinced with mere production or filing of an affidavit by the father of the petitioner.

As far as the case of Alakh Narayan Darad (supra) is concerned, in the said case, the authority had passed the order declaring the property left

behind to have vested in the State of Bihar under Rule 356 of the Rules. In the present case, only a process has started under Rule 358 of the Rules

and Amarendra Kumar Banerjee and the father of the petitioner have been noticed to come with reliable and acceptable proof relating to claim on the

land of Amarendra Kumar Banerjee. Thus, the decision of Alakh Narayan Darad (supra) is not of much use to the petitioner in the facts and

circumstances of the present case.

7. Coming to the claim of the petitioner's father that he is the class-II heir under Section 29 read with the Schedule of the Hindu Succession Act,

1956, the Court would only indicate that the fact of the petitioner's father being the brother of the recorded tenant may be in the personal

knowledge of the petitioner's father and even correct, but before the authorities, some valid document has to be produced to show such fact. The

Court would further indicate here that for many years the father of the petitioner never moved any application for creation of jamabandi in his name

upon the death of Amarendra Kumar Banerjee, if it had occurred. If he was really interested in the matter, he should have taken steps for the same.

Thus, without taking any steps for getting jamabandi created/transferred in his name with regard to the lands of Amarendra Kumar Banerjee and even

there being no proof produced before the authorities with regard to Amarendra Kumar Banerjee having died issue-less or not being married and the

way the properties have been dealt with by Rajendra Yadav, as discussed in detail both by Collector, Supaul as well as the Additional Collector,

Supaul in their orders dated 23.08.2014 and 24.04.2013 respectively, the Court prima facie finds that there has been fraud committed in the entire

transactions.

8. Thus, in the background of the discussions made hereinabove, the Court finds that the authorities were well within their jurisdiction and also correct

in calling upon the respective parties to produce succession certificate so that they can proceed in the matter in accordance with law. This was

necessary as it is the Civil Court of competent jurisdiction which can go into the

factual aspects where a person claims to be the successor/ heir of

any person since there is provision of adducing evidence and also calling of records from various places and then giving a finding based on such

evidence before the Court.

9. For reasons aforesaid, the application stands dismissed.

10. Before parting, the Court would indicate that in view of the discussions made in the orders of the Collector Supaul as well as the Additional

Collector, Supaul, there is ample indication that fraud has been committed and once such fraud is strongly indicated, the authorities are all the more

required to be very careful in the matter and they have rightly chosen to proceed on the basis of succession certificate which in law is the most

authentic document to rely upon when a claim is made by any person to be the heir or successor of any deceased person.